

REMARKS

Claim 1 has been canceled, claims 2-14, and 16 have been amended to more fully point out and distinctly claim the subject matter of the present invention and claims 17-20 have been added. No new matter has been added. Thus, claims 2-20 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

The Examiner rejected claims 1-14 and 16 in the Final Office Action stating that the claimed invention is directed to non-statutory subject matter. (See 9/10/04 Office Action, ¶ 5, p. 2).

Applicants have cancelled claim 1 and amended claims 2-9 and 16 to depend from claim 15, which is not rejected under 35 U.S.C. § 101. Applicants have also amended claims 10-14. As amended, it is respectfully submitted that claims 2-14 and 16 are directed to statutory subject matter.

The Examiner rejected claims 10-14 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. (9/10/04 Office Action, ¶ 7, p. 4).

Applicants have amended claims 10-14 using "means plus function" language. Therefore, these claims no longer recite software code *per se*. Accordingly, it is respectfully submitted that claims 10-14 are not indefinite.

The Examiner rejected claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable over Rebane, Kirk A., "Determining Worth in the Consolidation Era," *National Home Center News ProDealer Supplement*, Jan. 10, 2000 (hereinafter "Rebane") in view of U.S.

Patent Application Publication No. 2002-0049621 to Bruce ("the Bruce reference"). (9/10/04 Office Action, pp. 4-11, ¶¶ 8-9).

Rebane is one article of a six-part series that explores recent consolidation among lumber and building material ("LBM") dealers, distributors, and suppliers. Rebane discusses the importance to LBM dealers of knowing the worth of their businesses. (*See* Rebane, ¶ 1). As the primary determinant of the value of a lumberyard is cash flow, buyers will complete a comprehensive discounted cash flow model in order to determine the magnitude of an offer. (*Id.* at ¶ 4). The cash flow projections will be impacted by various factors. (*See Id.* at ¶¶ 4-14). These factors also influence where the value of a particular LBM dealer falls. (*Id.* at ¶ 4). Examples given of such factors are the dealer's opportunities for revenue growth, the quality of the dealer's revenue stream, the quality of the seller's inventory and accounts receivable, outstanding issues regarding environmental liabilities, etc. (*See Id.* at ¶¶ 4-14).

The Examiner rejected claim 15 under the same rationale used in the rejection of claim 1. (*See* Office Action, ¶ 9, p. 8). Applicants wish to point out that the Examiner uses Rebane exclusively as the basis for the rejection, and fails to mention the significance of the Bruce reference. (*See* Office Action, ¶ 9, pp. 4-6).

Claim 15 recites "evaluating at predetermined times *a potential monetary impact of each of the risks and each of the opportunities* on the future condition of the business entity." The specification of the present invention provides several exemplary methods for quantifying a monetary impact of an opportunity or risk. (*See* Specification, p. 13, ll. 12-26). The Examiner indicates that this is obvious in light of Rebane's discussion of an LBM dealer's need to know the value of his business, since "the occurrence of certain predetermined events triggers an

evaluation of risks and opportunities.” (See Office Action, ¶ 9, p. 5). Rebane identifies a number of factors which may affect the valuation of a business, particularly a lumberyard. (See generally Rebane, ¶¶ 4-14). Rebane also states that the value of a lumberyard is primarily determined by cash flow. (See Rebane, ¶ 4). However, Rebane never discloses how one would adjust cash flow based on the value affecting factors. Although Rebane discloses the importance of knowing the value of one’s business and asserts that various factors that may affect value, this deduction can be reached with common logic. Rebane fails to disclose, however, a method of employing these factors quantitatively in order to assess the impact on cash flow. Therefore, it is respectfully submitted that Rebane does not teach or suggest how one may quantify in a cash flow calculation “a potential monetary impact of each of the risks and each of the opportunities.”

Claim 15 further recites “determining at each of the predetermined times for each of the risks, *one of a probability that the risk will occur during a predetermined period of time and a frequency at which the risk will occur*” and “determining at each of the predetermined times for each of the opportunities, *one of a probability that the opportunity will occur during a predetermined period of time and a frequency at which the opportunity will occur.*” Exemplary methods of determining the probability of a risk/opportunity occurring within a given time period and the potential frequency of the risk/opportunity occurring are described in the specification. (See Specification, p. 13, ll. 6-20; Figs. 4 & 5). In the rejection of each of these limitations, the Examiner explained that a “predetermined period of time is interpreted as the period of time between the current time and the time of consummating a contract.” (See Office Action, ¶ 9, pp. 5-6.) The Examiner further explains in the Advisory Action that there is an implicit time-based probability involved in Rebane’s risk analysis. (See 3/4/05 Advisory Action Before the Filing of

an Appeal Brief, ¶ 11). Stated differently, “[r]isk analysis inherently incorporates some understanding of the probability of the risk occurring or not occurring.” (*Id.*). A fundamental flaw in the Examiner’s reasoning is that Rebane never discusses analyzing risk. (*See generally* Rebane). Rebane lists a number of factors which may impact a target company’s revenue, cash flow, potential growth, and risks associated with achieving sustainable performance. (*See* Rebane ¶¶ 5-14). Rebane also mentions that these factors may need to be addressed in negotiations between buyer and seller due to their potential impact. (*Id.* at ¶ 14). However, this is not tantamount to a risk analysis. Rebane in no way teaches or suggests the assignment of a probability or a frequency that one of the specified factors may occur. Rebane merely teaches the existence of the listed factors, and does not describe how this information should be utilized. Rebane never mentions assignment of probabilities or frequencies. Accordingly, no discussion of “determining at each of the predetermined times for each of the risks, *one of a probability that the risk will occur during a predetermined period of time and a frequency at which the risk will occur*” is present, regardless of how a “predetermined period of time” is interpreted. Therefore, it is respectfully submitted that Rebane neither teaches nor suggests determining “*one of a probability that the risk will occur during a predetermined period of time and a frequency at which the risk will occur*” or “*one of a probability that the opportunity will occur during a predetermined period of time and a frequency at which the opportunity will occur.*”

Claim 15 also recites “projecting at each of the predetermined times the future condition of the business entity based on a monetary value of each of the risks and opportunities, wherein *the monetary value for each of the risks and opportunities is determined based on the potential monetary impact and the corresponding one of frequency and probability.*” The

Examiner rejected this limitation using the same explanation of an interpretation of a “predetermined period of time” as used for the limitations discussed above. (*See* Office Action, ¶ 9, pp. 5-6.) As set forth above, Rebane does not teach or suggest determining a potential monetary impact of a risk/opportunity. Nor does Rebane teach or suggest determining a probability or a frequency of occurrence of a risk/opportunity. Therefore, Rebane certainly does not disclose using a monetary value of risks and opportunities, which is determined based on the monetary impact and corresponding frequency or probability, to project future business conditions. As such, Applicants respectfully submit that Rebane neither teaches nor suggests “projecting at each of the predetermined times the future condition of the business entity based on a monetary value of each of the risks and opportunities, wherein *the monetary value for each of the risks and opportunities is determined based on the potential monetary impact and the corresponding one of frequency and probability.*”

Bruce discloses a method and a means for analyzing a process in terms of the drivers of the process. (*See* Bruce, abstract). Generally, each activity has a scheduling component, which is the factor(s) that can affect when an activity is started, how long the activity is performed, by whom it is performed, where it is performed, etc. (*See* Bruce, ¶ [0114]). Each activity also has an operational component, which represents the work done by the activity. (*See* Bruce, ¶ [0115]). Scheduling drivers and operational drivers are related to the overall system, as well as elements within a system. (*See* Bruce, ¶ [0117]). Information is collected at a specified level for each of the drivers and elements of the system, analyzed at the same level, and results are given about the system at that level. (*See* Bruce, ¶ [0128]).

As applied to business systems, the scheduling driver and the operational driver

may be weighted differently with respect to their importance. (See Bruce, ¶ [0192]). For this purpose scheduling drivers are used to classify different entities, each of which contains various levels of information, i.e., customer priority, previous selling history, potential customers, etc. (See Bruce, ¶¶ [0194 - 0198]). Operational drivers are used to manage resources. (See Bruce, ¶ [0210]). The weighted averages of the levels of each entity may be used in conjunction with the resource manger to assess a business venture. (See Bruce, ¶¶ [0405 - 0407]).

Bruce fails to cure the deficiencies of Rebane as it neither teaches nor suggests quantifying risks and opportunities based on the monetary impact to the business entity. The system of weighted averages used to make a decision in Bruce is merely a statistical analysis of historical information. In the present invention, risks and opportunities have corresponding monetary values. These monetary values may be used to establish a decision making process in a business environment. Bruce makes no mention of the monetary values of risks and opportunities, let alone make use of them in the decision making process. The weighted averages discussed in Bruce do not encompass dollar values corresponding to the levels of information in the classification of each entity. Bruce limits discussion of monetary considerations to historical budget data and changes in cost. Bruce in no way teaches or suggests the assignment of a monetary value to a risk/opportunity, or describes how this value can be used to project the potential monetary impact of a risk/opportunity on business conditions.

Applicants respectfully submit that claim 15 is allowable, as neither Rebane nor Bruce, alone or in combination, teach or suggest the described limitations. Because claims 2-9 and 16 depend from and therefore include all the limitations of claim 15, it is respectfully submitted that these claims are allowable for the same reasons as stated above.

Claim 10 recites a system comprising "a second storage means for receiving and storing data corresponding to a potential monetary impact on the future condition of the business entity of each of the risks and opportunities." Claim 10 also recites "a calculation means for projecting the future condition of the business entity based on a monetary value of each of the risks and opportunities stored in the first storage means, wherein the monetary value is a function of the potential impact and the one of frequency and probability for each of the risks and opportunities from the first and second input means." These limitations are similar to those discussed above with respect to claim 15. The Examiner rejected claim 10 under the same rationale used in the rejection of claims 1 and 15. (*See* Office Action, ¶ 9, p. 8). Accordingly, it is respectfully submitted that claim 10, and claims 11-14 which depend from and therefore include all the limitations of claim 10, are allowable for the same reasons as stated above.

CONCLUSION

Applicants respectfully submit that all of the now pending claims are in condition for allowance, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By: 
Michael J. Marcin (Reg. No. 48,198)

FAY KAPLUN & MARCIN, LLP
150 Broadway, Suite 702
New York, NY 10038
(212) 619-6000 (phone)
(212) 208-6819 (facsimile)